

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3569 OF 2020

Shantabai Bulabrao Kaje and others

vs.

Govind s/o Jagatrao Wavge and others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. J. Thakkar, counsel for petitioners.

CORAM : MANISH PITALE J.

DATED : 21/12/2020

Heard learned counsel for the petitioner

2. By this writ petition, the petitioners have challenged an order dated 09/12/2020 passed by the Court below, whereby an application filed by the respondents (original plaintiffs) seeking police protection has been allowed and the police has been directed to gave aid to the respondents in implementing and enforcing the order of temporary injunction granted in their favour by the Courts below.

3. In the present case, the respondents (original plaintiffs) have filed a suit claiming that they are in possession of the suit property and in the said suit an application for grant of temporary injunction was moved seeking relief of an order of restraintment against the

petitioner from disturbing the peaceful possession of the respondents in the suit property.

4. It is undisputed that the application for temporary injunction (Exh.5) filed by the respondents was allowed on 09/07/2019 and the petitioners herein were restrained by an order of temporary injunction from disturbing peaceful possession of the suit property till final disposal of the suit. It is also an admitted position that the appeal filed by the petitioners against the said order was dismissed by the Appellate Court on 17/08/2020.

5. It is submitted on behalf of the petitioners that a writ petition challenging the said order of the Appellate Court was filed and it is pending before this Court.

6. In the interregnum, the respondent filed the aforesaid application for grant of police aid under Section 151 of the Civil Procedure Code (CPC). By the impugned order, the said application has been allowed.

7. It is vehemently submitted on behalf of the petitioners before this Court that a perusal of the application filed by the petitioner would indicate that no new incident was brought to the notice of the Court for seeking police aid and that in terms of the judgment of this Court in the case of **Smt.Nitabai J. Patil vs. Narayan D. Patil and others [AIR 2004 BOMBAY 225]**, unless an

emergent situation of distress was demonstrated by the respondents, any order in the nature of the impugned order could not have been passed by the Court below.

8. This Court has considered the contentions raised on behalf of the petitioners. The material on record demonstrates that two Courts below concurrently have found in favour of the respondents regarding possession of the suit property. Specific order of temporary injunction is operating against the petitioners restraining them from interfering with possession of the respondents. Although writ petition is filed by the petitioners before this Court, challenging the concurrent findings given by the two Courts below on the question of possession of the respondents in the suit property and grant of temporary injunction, it appears that no effort has been made till date by the petitioners to have the said writ petition listed for consideration before this Court.

9. It is in this backdrop, that the aforesaid application for grant of police aid was filed on behalf of the respondent and the impugned order has been passed allowing the said application. This Court is of the opinion that when two Courts have concurrently found at the stage of consideration of the application of temporary injunction that sufficient material has been placed on record by the respondents justifying the grant of an order of temporary injunction in their favour, restraining the petitioners from disturbing peaceful possession, the occasion for the police to grant aid to the respondents

would arise only if the petitioners make any attempt to violate the order of temporary injunction operating against them. If the petitioners do not make any such attempt, there would be no occasion for the police to give aid to the respondents. This Court is making the aforesaid observation for the reason that in the impugned order the Court below has clearly directed the police to aid the respondents and to assist them in enforcing the order of temporary injunction passed in their favour.

10. In this backdrop, this Court is of the opinion that there is no substance in the contention raised on behalf of the petitioners that the impugned order would work against their interest. The contention being raised on behalf of the petitioners that they are in possession of the suit property cannot be considered by this Court in this proceeding, in the face of concurrent findings rendered by the two Courts below against the petitioners about the fact that the respondents are in possession of the suit property.

11. Hence, there is no merit in the present writ petition and it is dismissed. No costs.

JUDGE